

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

STATE OF IOWA, STATE OF NORTH
DAKOTA, *et al.*,

Plaintiffs,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY, and BRENDA MALLORY, in her
official capacity as Chair of the Council on
Environmental Quality,

Defendants,

and

ALASKA COMMUNITY ACTION ON
TOXICS, *et al.*,

Defendant-Intervenors.

Case No. 24-cv-00089-DMT-CRH

[PROPOSED] NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff States respectfully notify the Court of the newly issued decision by the D.C. Circuit in *Marin Audubon Soc’y v. Fed. Aviation Admin*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). In that decision, despite the argument not having been made by the parties, the D.C. Circuit held that CEQ’s exercise of rulemaking authority constituted a violation of the separation of powers and was *ultra vires*, and that there were “compelling reasons” for the Court *sua sponte* “to determine the validity of the CEQ regulations once and for all.” *Marin Audubon*, No. 23-1067, slip op. at 9-10. A copy of the slip opinion is provided.

Dated: November 13, 2024

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CERTIFICATE OF SERVICE

I certify that on this 13th day of November 2024, I electronically filed the foregoing with the Clerk of the U.S. District Court for the District of North Dakota and served all parties using the CM/ECF system.

/s/ James M. Auslander